PIONEER OIL & GAS

IBLA 90-65 Decided November 15, 1991

Appeal from a decision of the Deputy State Director, Mineral Resources, New Mexico, Bureau of Land Management, upholding a finding of violation and assessment for failure to install required blowout prevention equipment. 14-20-603-242.

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance

It is proper for BLM to levy an assessment pursuant to 43 CFR 3163.1(b)(1), for an oil and gas lessee's failure to have blowout prevention equipment installed at a well during plugging and abandoning operations, when the installation of that equipment is required by an approved plan.

APPEARANCES: Gregg B. Colton, Vice President, Pioneer Oil and Gas, Midvale, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Pioneer Oil & Gas Company (Pioneer) has appealed from a September 18, 1989, decision of the Deputy State Director, Mineral Resources, New Mexico, Bureau of Land Management (BLM), upholding the Farmington Resource Area Manager's finding that Pioneer had failed to install blowout prevention equipment before commencing plugging operations, and levying a $1,000 assessment for the violation.

This case concerns activity which occurred during Pioneer's plugging and abandoning operations at the Gothic Mesa Unit No. 9-44 well (well 9-44), situated in the SE¼ SE¼ sec. 9, T. 41 S., R. 23 E., Salt Lake Meridian, San Juan County, Utah. The well was located on Indian oil and gas lease 14-20-603-242, and Pioneer is the successor-in-interest to the original holder of that lease.

Well 9-44 was spudded on April 19, 1962, drilled to a total depth of 5,703 feet, and had initial production of 35 barrels of oil per day. On April 17, 1989, after the lease had passed through several hands, and several attempts had been made to stimulate production, Pioneer submitted a sundry notice requesting approval of its plan to plug and abandon the

well. The plan was approved by the Area Manager, Farmington Resource Area, New Mexico, BLM, on April 20, 1989, subject to a set of conditions attached to the approval. The fourth condition stated: "Blowout prevention equipment is required."

The case file contains a handwritten statement written by Mark Philliber and dated August 27, 1989. Philliber had visited the wellsite on July 16, 1989, and observed tubing that had just been pulled out of the well and the lack of blowout prevention equipment. In his statement he noted that Pioneer's company representative advised him that the blowout prevention equipment had not arrived, but that he would personally get it. During the remainder of the time he was at the site the operation was idle and Philliber discussed the plugging program with the contractor who was waiting for the equipment. While leaving the site Philliber observed the blowout prevention equipment arriving at the site. In the same memorandum Philliber was advised by Jimmy Morris, who is also a BLM employee, that when Morris visited the site the next day operations were continuing, but that the blowout prevention equipment had not been installed because the flange was not the correct size.

A statement written by Morris (Morris statement) outlines his activities and observations. When he arrived on the site on July 17, the rig was running drift in the hole and the blowout prevention equipment was sitting on a trailer next to the hole. After seeking advice from his supervisor, Morris shut down the operations and remained at the site until the blowout protector was installed.

In a letter dated July 19, 1989, the Area Manager advised Pioneer that a "field inspection of [the] well on July 16 and 17, 1989, revealed that blowout prevention equipment had not been installed on [the] well as required by 'conditions of approval' attached to your plugging program for this well approved by [the Farmington Resource Area] office on April 20, 1989." The letter also notified Pioneer that an assessment was being levied pursuant to 43 CFR 3163.1(b)(1), because the violation was considered to be a major violation. 1/ The amount assessed was $500 for each day the violation continued, or $1,000.

1/ 43 CFR 3163.1(b) provides in relevant part that:

"Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

"(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000."

This regulation effectively replaced the provision for the assessment of liquidated damages for "failure to install required high-pressure * * * equipment." 30 CFR 221.54 (7 FR 4138 (June 2, 1942)). It first appeared in its present

Pioneer sought State Director review pursuant to 43 CFR 3165.3(b). In arguments submitted to the State Director, Pioneer admitted that the necessary equipment was not installed during plugging operations on July 16 and part of July 17, 1989, but argued that it was "unfairly" assessed for failure to have blowout prevention equipment installed. Pioneer set forth its version of the sequence of events as follows:

> On July 16, 1989, Mark Philliber of the BLM's Farmington Resource Area arrived on the 9-44 location while the rig crew was in the process of pulling tubing. At this time, Mr. Philliber inquired about the status of our [blowout prevention equipment] and was in turn informed by our company supervisor, Eric Noblitt, that the blowout protection equipment was in route to the location. Later the same day the [blowout prevention equipment] arrived, however it required an unusual flange fitting and we were unable to install the [blowout prevention equipment]. Subsequently, the well head was nipped back up and the well was shut in for the evening so that the correct flange could be expedited out of Farmington.
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> On July 17, 1989, Mr. Noblitt arrived back on location at approximately 10:00 a.m. with the correct flange fitting. At 8:00 a.m. the crew began to nipple the well head down and go in the hole with a gauge rig. During this operation, there were two BLM technicians on location that were aware of the situation with the [blowout prevention equipment].
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> By approximately 10:30 a.m. the well was nippled up and the [blowout prevention equipment] installed on [well] 9-44.

In his September 1989 decision, the Deputy State Director outlined the facts and Pioneer's argument, and upheld both the Area Manager's July 1989 finding that Pioneer had failed to comply with the requirement to install blowout prevention equipment and his assessment of $1,000 for that violation. He concluded:

> The operator failed to install the [blowout prevention equipment] as required by the approval and operated in that condition for two days. The fact that the technicians did or did not shut-in the operation does not alter the fact that abandonment operations were conducted for two days without the proper equipment. The operator endangered the operations and had no way to

fn. 1 (continued)
form in proposed rulemaking undertaken in 1981 to revise and modernize the 1942 regulations. See 30 CFR 221.61 (46 FR 56571 (Nov. 17, 1981)). At the time, the Department stated that it was adding three "new" categories of liquidated damages, not including the failure to install required blowout prevention equipment. Id. at 56565. The proposed rulemaking was finalized in 1982. See 30 CFR 221.52 (47 FR 47772 (Oct. 27, 1982)).

> control the well in the case of a blow out and was therefore in violation o[f 43 CFR 3163.1(b)(1)].

Pioneer appealed the Deputy State Director's decision.

In its statement of reasons for appeal, Pioneer reiterates the argument in its request for State Director review, claiming that it has been unfairly assessed for its failure to install required equipment because BLM was aware of its plugging operations on July 16 and 17, and allowed those operations to continue. Pioneer states: "By never saying a word while Pioneer was in noncompliance with regards to the [blowout prevention equipment], the BLM was an accessory in allowing Pioneer to continue its operations." Pioneer asserts that it believed it was in compliance at the time because it "was attempting to do everything possible to place the [blowout prevention equipment] in operation" and would have immediately halted operations if it had been informed that BLM considered the failure to have the equipment in place a serious violation.

The essential facts in this case are not in dispute. On July 16, 1989, appellant engaged in plugging operations at the Gothic Mesa Unit No. 9-44 well before installing blowout prevention equipment. On the next day it continued its plugging operations even though the blowout prevention equipment had not been installed. On both days BLM employees observed the operations and instructed Pioneer to install the blowout prevention equipment. Pioneer admitted that it pulled tubing from the well bore on July 16 when it stated that it was pulling tubing when Philliber came on the site. Pioneer also admits that it did not nipple the well before Philliber left the site.

Pioneer contends that the gauge rig was not placed in the hole on July 17 after the two BLM employees had arrived. Morris states that when
he and another BLM employee arrived at the wellsite on July 17, Pioneer was "running drift in [the] hole" (Morris statement). Morris said that after receiving instructions from the Resource Area Office, he directed appellant to carefully pull the drift out of the hole and install the blowout prevention equipment. Id. Morris observed both the removal of the equipment in the hole and placement of the blowout prevention equipment.

[1] Both BLM and Pioneer have construed the violation as conducting plugging operations without having first installed blowout prevention equipment. Pioneer admitted that it was conducting plugging operations without the benefit of blowout prevention equipment when seeking State Director review of the Area Manager's July 1989 decision. It argued that BLM shared the responsibility for the violation because its employees allowed Pioneer to continue after observing the absence of blowout prevention equipment. In his July 1989 letter, the Area Manager found Pioneer to be in violation and levied an assessment under 43 CFR 3163.1(b)(1) because "blowout prevention equipment had not been installed on th[e] well," as required by the conditions of approval of Pioneer's April 1989 sundry notice. When assessing liquidated damages of $500 per day, the Area Manager limited the assessment to the 2 days that BLM had witnessed Pioneer's plugging operations without the benefit of blowout prevention equipment.

Clearly, the violation and thus the assessment hinged on proof of operations which were not in compliance with the written directive found in the conditions to approval.

The Deputy State Director states that the operator "endangered the operations and had no way to control the well in the case of a blowout and was therefore in violation o[f 43 CFR 3163.1(b)(1)]." (Emphasis added.) The violation of 43 CFR 3163.1(b)(1) occurred because of Pioneer's "failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan." 43 CFR 3163.1(b)(1). The stipulation to the approval of the plan of operations states that blowout prevention equipment is required, and this requirement was a condition for approval of Pioneer's proposed plugging and abandoning operations. Thus, when Pioneer conducted operations without the equipment in place, it violated 43 CFR 3163.1(b)(1).

Pioneer seeks to avoid liability for its violation by contending that BLM is also responsible for the violation. We disagree. Pioneer was engaged in plugging operations before the BLM employee arrived at the wellsite on July 16, 1989. Pioneer admits that Philliber "arrived * * * while the rig crew was in the process of pulling tubing" from the well hole (Letter to BLM, dated Aug. 7, 1989, at 1). Accepting appellant's view of the facts, the violation had occurred prior to Philliber's arrival. There is also no suggestion that Philliber authorized further plugging operations without blowout prevention equipment during the course of his inspection on July 16. He noted that appellant had halted operations while waiting for the blowout prevention equipment, and that he observed the equipment being transported to the wellsite. He stated that when driving away from the wellsite: "Eric waved me down and said that he had found the [blowout prevention equipment] and would install it right now. I told him that would be fine." Id. at 3. We have no evidence that Philliber was at the wellsite when it was found that the blowout prevention equipment could not be used because the flange was wrong or when operations resumed.

Pioneer contends that on July 17, 1989, Morris and the other BLM employee at the site allowed continued operation without blowout prevention equipment in place. It states: "At 8:00 a.m. the crew began to nipple the well head down and go in the hole with a gauge rig. During this operation, there were two BLM technicians on location that were aware of the situation with the [blowout prevention equipment]" (Letter to BLM, dated Aug. 7, 1989, at 1 (emphasis added)). On the other hand, Morris states that they did not arrive at the wellsite until 10 a.m. See Morris statement. According to Morris, the only operation permitted after their arrival was the removal of drift from the hole to allow the well to be nippled up and the blowout prevention equipment to be installed.

The description given by Pioneer does not comport with Morris' detailed description of the steps taken to remove the drift from the hole before nippling up. By having the drift in the hole without having blowout prevention equipment installed was a violation, and there is nothing in the record

to refute the statement that the drift was in the hole when the BLM employees arrived on July 17. Therefore, we conclude that Pioneer had resumed plugging operations on July 17 prior to the arrival of the BLM employees and those operations were conducted without a blowout preventer being in place.

We find no evidence supporting Pioneer's contention that BLM allowed plugging operations to be conducted without blowout prevention equipment either on July 16 or 17, 1989. Once aware of the conduct of operations without having the equipment in place, BLM actively sought to have Pioneer take steps to secure the well. If the employees had allowed Pioneer to commence plugging operations without the necessary equipment in place,
there may have been a question of whether BLM should be estopped from citing Pioneer for that violation. Pioneer's allegation is that they somehow allowed these operations to continue. Its rationale for the imposition of estoppel is that, by calling the violation to Pioneer's attention without immediately citing it, BLM somehow led Pioneer to believe that no violation was occurring and, thus, acted to its detriment when later imposing
the assessment. Estoppel must fail. Pioneer was clearly on notice at all times, by virtue of the specific requirement of the conditions for approval of its sundry notice and 43 CFR 3163.1(b)(1), that blowout prevention equipment must be installed before commencing any other operations. Failure to do so constituted a violation. See Jack J. Grynberg, 114 IBLA 225, 229 (1990). Simply put, appellant could not have been misled by the BLM employees when those employees advised it of the violation during the course of their inspection. 2/

Pioneer was responsible for having blowout prevention equipment installed before engaging in plugging operations. It failed to do so. After this failure was brought to Pioneer's attention, it continued that violation. The violation occurred both on July 16 and on the morning of July 17, 1989, and thus Pioneer's infraction continued for 2 days. 3/ The total assessment mandated by 43 CFR 3163.1(b)(1) is $1,000. The Deputy State Director properly upheld the Area Manager's July 1989 finding of violation and assessment of $500 per day for failure to install required blowout prevention equipment at the Gothic Mesa Unit No. 9-44 well for 2 days. Cf. Noel Reynolds, supra (drilling without approval).

2/ Pioneer alleges that BLM suffered no damage as a result of the failure to install required equipment. It matters not. An assessment, in the nature of liquidated damages (where actual damages are difficult or impracticable to ascertain), is now mandated by 43 CFR 3163.1(b) for failure to install required blowout prevention equipment. This action is like drilling without prior approval. See Jack Corman, 119 IBLA 289, 295 (1991); Noel Reynolds, 110 IBLA 74, 76 (1989), and cases cited therein.

3/ It matters not that the violation was known to have occurred during a portion of each day. We have similarly upheld an assessment of the full daily amount for drilling without approval where such drilling occurred for only a portion of one day. See Jack J. Grynberg, supra at 227-28. Drilling without approval requires an immediate assessment under 43 CFR 3163.1(b), and similar treatment is clearly warranted.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

John H. Kelly
Administrative Judge